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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Joseph Seamon

Title: METHOD AND SYSTEM FOR CATEGORIZING ITEMS IN BOTH ACTUAL AND VIRTUAL CATEGORIES

Docket No.: 2043.098US1
Filed: December 8, 2000
Examiner: Hanh B Thai



Serial No.: 09/733,767
Due Date: 12/13/2005
Group Art Unit: 2163

MS Appeal Brief - Patents
Commissioner for Patents
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Dawn R. Shaw
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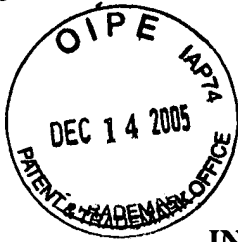
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APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Joseph Seamon

Examiner: Hanh B. Thai

Serial No.: 09/733,767

Group Art Unit: 2161

Filed: December 08, 2000

Docket: 2043.098US1

For: METHOD AND SYSTEM FOR CATEGORIZING ITEMS IN BOTH ACTUAL
AND VIRTUAL CATEGORIES

APPEAL BRIEF UNDER 37 CFR § 41.37

Mail Stop Appeal Brief- Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Appeal Brief is presented in support of the Notice of Appeal to the Board of Patent Appeals and Interferences, filed on October 11, 2005, from the Final Rejection of claims 1, 3-12, 14-18, and 20-29 of the above-identified application, as set forth in the Final Office Action mailed on August 12, 2005.

The Commissioner of Patents and Trademarks is hereby authorized to charge Deposit Account No. 19-0743 in the amount of 500.00 which represents the requisite fee set forth in 37 C.F.R. § 41.2(b)(2). The Appellant respectfully requests consideration and reversal of the Examiner's rejections of pending claims.

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1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is the assignee, EBAY INC., as evidenced by the assignment recorded December 8, 2000 on Reel 011358, Frame 0581.

2. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellant that will have a bearing on the Board's decision in the present appeal.

3. STATUS OF THE CLAIMS

The present application was filed on December 8, 2000 with claims 1-29. In response to the non-final Office Action mailed February 27, 2003, Appellant canceled claims 13 and 19. In response to the non-Final Office Action mailed February 9, 2005, Appellant canceled claim 2. A Final Office Action (hereinafter "the Final Office Action") was mailed August 12, 2005. Claims 1, 3-12, 14-18, and 20-29 stand twice rejected, remain pending, and are the subject of the present Appeal.

4. STATUS OF AMENDMENTS

No amendments have been made subsequent to the Final Office Action mailed August 12, 2005.

5. SUMMARY OF CLAIMED SUBJECT MATTER

Some example aspects of the present inventive subject matter include, but are not limited to, systems and methods of constructing a category structure within a database 23, classifying a data item within the category structure within the database 23, and facilitating location of the data item within the category structure within the database 23. In one example embodiment, a database designer defines a hierarchy of “actual” categories by adding category records to a category table 47 (Paragraph 49). In addition, the database designer may define one or more hierarchies of “virtual” categories by adding “virtual” category records to the same category table 47 (Paragraph 50, Figure 6), according to one embodiment. A “virtual” category may be linked to an “actual” category, according to one embodiment (Paragraph 38).

Figure 6 is a conceptual diagram illustrating a hierarchy of “actual” categories 100 and an alternate hierarchy of “virtual” categories 102, according to one example embodiment. Assume a seller classifies a data item (e.g., “1932 Black Model T – loaded with extras”) by identifying the “actual” category “Model T.” The user may not classify the data item by identifying a “virtual” category; but rather, only by identifying an “actual” category, according to one embodiment (Paragraph 45). A potential buyer may locate the data item by identifying the actual categories “Passenger Vehicle / Ford / Model T.” The buyer may further locate the same data item by identifying the “virtual” categories “Collectors Cars / Ford / Model T.”

In one embodiment, the database 23 may be implemented as a relational database, and includes a number of tables having entries, or records, that are linked by indices and keys (Paragraph 29). In one embodiment, the database 23 may be implemented as a collection of objects in an object oriented database (*Id.*). In one embodiment, the database 23 may support a web site that classifies data items for presentation to a user via a browser (Paragraph 48). Data items may describe, for example, web sites, products, services or any other items that may be categorized so as to facilitate convenient location

by a user. In one example embodiment, the data items may describe goods and services that are offered for sale via an auction process by a network-based auction facility 10. However, it will readily be appreciated that the present invention is not limited to use such an exemplary facility (Paragraph 48).

This summary does not provide an exhaustive or exclusive view of the present subject matter, and Appellant refers to the appended claims and its legal equivalents for a complete statement of the invention.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 3-12, 14-18 and 20-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ortega et al. (U.S. 6,489,968) in view of Goedken (U.S. 6,393,423).

7. ARGUMENT

Claims 1, 3-12, 14-18 and 20-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ortega et al. (U.S. 6,489,968; hereinafter Ortega) in view of Goedken (U.S. 6,393,423; hereinafter Goedken). Appellant respectfully submits that claims 1, 3-12, 14-18 and 20-29 should not be rejected under 35 U.S.C. § 103 for the reason that prior art references when combined do not teach or suggest all of the claim limitations of the independent claims of the present application.

A) The Applicable Law under 35 U.S.C. §103(a)

To establish a *prima facie* case of *obviousness*, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Appellant's disclosure.

In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991),

To establish *prima facie obviousness* of a claimed invention, all the claim limitations must be taught or suggested by the prior art.

MPEP 2143.03 citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

“All words in a claim must be considered in judging the patentability of that claim against the prior art.”

MPEP 2143.03 citing *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.

MPEP 2143.03 citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

B) Discussion of the rejection of claim 1 under 35 U.S.C. § 103(a) as being taught or suggested by Goedken

Claim 1 includes the following limitation:

defining the first structure of categories as a first hierarchy of categories and defining the second structure of categories as an alternative second hierarchy of categories...

The Final Office Action contends that the above limitation is anticipated by the following disclosure in Goedken:

Occasionally, the selector 110 may be unable to select an appropriate information custodian 14 for a particular information request message 18 (i.e., no information custodians 14 exist in-the identified category...). In such an instance, the selector 110 may select an alternate category from a predefined hierarchy of categories (see FIGS. 12 and 13). The alternate category may be narrower or more general than the original category. For example, if an information request message 18 contains a subject segment 27 value of "Animals/Bats", but no information custodians 14 are available in the "Animals/Bats" category, an information custodian 14 associated with the "Animals" category or the "Animals/Bats/Radar" category or the "Zoology" category may be selected (e.g. 1000001234; 1000005678; 1000002468; ...).

Goedken, Col 28, lines 33-49.

The above quote from Goedken describes a selector that selects an information custodian from a hierarchy of categories. The selector usually selects an information custodian from an identified category. Occasionally an information custodian does not exist in the identified category. In such an instance the selector may select an alternate category from the hierarchy of categories. The above quote provides an example for a hierarchy of categories, "Animals/Bats/Radar." If the selector is unable to find an information custodians in the category "Bats" then the selector may select an information custodian from the alternate categories "Animals" or "Radar."

Goedken fails to teach or suggest defining a first structure of categories as a first hierarchy of categories and defining a second structure of categories as an alternative second hierarchy of categories

Claim 1 requires defining a first structure of categories as a first hierarchy of categories and defining a second structure of categories as an alternative second hierarchy of categories. Merely for example, Figure 6 of the present application is a diagram illustrating a first hierarchy of categories (e.g., Actual Categories) and an alternative second hierarchy of categories (e.g., Virtual Categories).

In contrast to the limitations of claim 1, the above quote from Goedken does not describe a first hierarchy of categories and an alternative second hierarchy of categories; but rather, a single hierarchy of categories. Indeed, the above quote from Goedken describes selecting an information custodian from “*alternate categories*” (e.g., “Animals”, “Radar”) within the single hierarchy of categories (e.g., “Animals/Bats/Radar”); but nowhere does the above quote from Goedken describe defining a first hierarchy of categories and defining a second structure of categories as an alternative second hierarchy of categories. The Advisory Action states the following:

“the claimed language does not require that the first categories and the second categories be in separate hierarchy structure.”

Advisory Action, Continuation Sheet.

The Appellant respectfully disagrees. Indeed, claim 1 requires the following:

defining *a first structure of categories* to classify a data item, the first structure including at least a first category;

defining *a second structure of categories* to provide an alternative classification of the data item, the second structure including at least a second category; and

defining the *first structure of categories* as a **first hierarchy of categories** and defining the *second structure of categories* as an **alternative second hierarchy of categories**

Goedken therefore cannot be said to teach or suggest the above quoted limitations of claim 1 because Goedken describes a single hierarchy of categories and claim 1 requires defining a first structure of categories as a first hierarchy of categories and defining the second structure of categories as an alternative second hierarchy of categories.

The above remarks are also applicable to a consideration of independent claims 14, 20, 28 and 29. Accordingly, Appellant requests that the above remarks and amendments contained herein also be considered when examining these other independent claims for allow ability.

In addition, if an independent claim is nonobvious under 35 U.S.C. § 103 then, any claim depending therefrom is nonobvious and rejection of claims 3-12, 15-18, and 21-27 under 35 U.S.C. § 103 is also addressed by the above remarks.

In summary, Ortega in combination with Goedken does not teach or suggest each and every limitation of claims 1, 14, 20, 28 and 29 as required to support rejections of the independent claims of the present application under 35 U.S.C. § 103.

8. SUMMARY

In Summary, Goedken cannot be said to teach *or suggest* the above quoted limitations of claim 1 because Goedken describes a single hierarchy of categories and claim 1 requires defining a first structure of categories as a first hierarchy of categories and defining a second structure of categories as an alternative second hierarchy of categories.

Respectfully submitted,

JOSEPH SEAMON

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. Box 2938

Minneapolis, MN 55402

Date

12/12/2005

By

Mark R. Vatuone

Mark R. Vatuone

Reg. No. 53,719

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Signature

CLAIMS APPENDIX

1. (Rejected) A method of constructing a category structure within a database, the method including:
 - defining a first structure of categories to classify a data item, the first structure including at least a first category;
 - defining a second structure of categories to provide an alternative classification of the data item, the second structure including at least a second category; and
 - defining the first structure of categories as a first hierarchy of categories and defining the second structure of categories as an alternative second hierarchy of categories,wherein the second category is associated with the first category, the first category comprises a first category path defined in terms of the first structure of categories and the second category comprises a second category path defined in terms of the second structure of categories, the first category path including a first plurality of categories that are respectively associated with a first plurality of category identifiers and the second category path including a second plurality of categories that are respectively associated with a second plurality of category identifiers.
2. (Canceled)
3. (Rejected) The method of claim 2 wherein the first category is a leaf category of the first hierarchy of categories.
4. (Rejected) The method of claim 2 wherein the second category is a leaf category of the second hierarchy of categories

5. (Rejected) The method of claim 1 including defining the second category to point to the first category.
6. (Rejected) The method of claim 2 wherein the defining of the second structure includes defining the second hierarchy such that navigation of the second hierarchy to locate data items classified as being attributed to the second category locates data items classified as being attributed to the first category of the first hierarchy.
7. (Rejected) The method claim of 1 wherein the data item is user classifiable under the first structure of categories and is not user-classifiable under the second structure of categories.
8. (Rejected) The method of claim 1 wherein the data item is directly categorized as being within the first category of the first structure of categories and is indirectly categorized as being within the second category of the second structure of categories.
9. (Rejected) The method of claim 1 wherein the definition of the first and second structures of categories includes defining a category table including a category record for each category of the first and second structures of categories, each category record within the category table including a category identifier, wherein a category record that describes the second category includes a category identifier of a category record for the first category.
10. (Rejected) The method of claim 1 wherein the data item is a database record describing any one of a group of products and services of a transaction facilitated by a network-based transaction facility.

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11. (Rejected) The method of claim 1 wherein the network-based transaction facility is a network-based auction facility.
12. (Rejected) The method of claim 1 including defining a third structure of categories to provide a further alternative classification of the data item, the third structure including at least a third category, wherein the third category is associated with the first category of the first structure of categories.
13. (Canceled)
14. (Rejected) A method of classifying a data item within a database, the method including:
- identifying a first category, of a first hierarchy of categories, attributed to a data item; and
 - automatically attributing a second category, of a second alternative hierarchy of categories, to the data item,
- wherein the first and second categories are defined by respective category paths of the first and second hierarchies of categories, the first category path including a first plurality of categories that are respectively associated with a first plurality of category identifiers and the second category path including a second plurality of categories that are respectively associated with a second plurality of category identifiers.
15. (Rejected) The method of claim 14 wherein the first and second categories are associated within a description of categories within the database.
16. (Rejected) The method of claim 14 wherein the first category is attributed to the data item by a user during a user classification operation and the second category is dynamically attributed to the data item during a user navigation operation of the second

hierarchy of categories, wherein the dynamic attributing of the second category is performed by identification of an association between the first and second categories.

17. (Rejected) The method of claim 14 wherein the first category is directly recorded within the database as being attributed to the data item and the second category is recorded as being linked to the first category within the database.

18. (Rejected) The method of claim 14, wherein the first and second categories are each leaf categories of the respective first and second hierarchies of categories.

19. (Canceled)

20. (Rejected) A method of facilitating location of a data item within a database, the method including:

facilitating user-navigation of a first category structure to select a first category;

identifying a second category of a second category structure as being linked to the first category of the first category structure; and

identifying data items of the second category responsive to the selection of the first category of the first category structure,

wherein the first and second categories are defined by respective category paths of the first and second hierarchies of categories, the first category path including a first plurality of categories that are respectively associated with a first plurality of category identifiers and the second category path including a second plurality of categories that are respectively associated with a second plurality of category identifiers, wherein the first category structure includes a first hierarchy of categories and the second category structure includes a second alternative hierarchy of categories.

21. (Rejected) The method of claim 20 wherein the facilitating of the user navigation comprises presenting at least one user interface to display navigation information according to the first hierarchy of categories.
22. (Rejected) The method of claim 21 wherein the presenting of the at least one user interface comprises generating at least one markup language document.
23. (Rejected) The method of claim 22 including providing, within the context of the markup language document, any one of a group of navigation aids including a drop-down menu, a selection of check boxes, a selection of radio buttons, an embedded Java application and an embedded ActiveX control.
24. (Rejected) The method of claim 20 wherein the identification of the second category comprises accessing a category table including a first record describing the first category, wherein the first record includes a pointer to a second record within the category table describing the second category.
25. (Rejected) The method of claim 20 wherein the identifying of the data items comprises accessing an items table to identify at least a first record identifying the second category.
26. (Rejected) The method of claim 20 wherein the first and second categories comprise respective leaf categories of the first and second hierarchies of categories.
27. (Rejected) The method of claim 20 including communicating the identified data items within a markup language document transmitted over a network

28. (Rejected) A machine-readable medium storing a sequence of instructions that, when executed by a machine, cause the machine to perform the steps of:
- identifying a first category, of a first hierarchy of categories, attributed to a data item; and
 - automatically attributing a second category, of a second alternative hierarchy of categories, to the data item,
- wherein the first and second categories are defined by respective category paths of the first and second hierarchies of categories, the first category path including a first plurality of categories that are respectively associated with a first plurality of category identifiers and the second category path including a second plurality of categories that are respectively associated with a second plurality of category identifiers.
29. (Rejected) A machine-readable medium storing a sequence of instructions that, when executed by a machine, cause the machine to perform the steps of:
- facilitating user-navigation of a first category structure to select a first category;
 - identifying a second category of a second category structure as being linked to the first category of the first category structure; and
 - identifying data items of the second category responsive to the selection of the first category of the first category structure,
- wherein the first and second categories are defined by respective category paths of the first and second hierarchies of categories, the first category path including a first plurality of categories that are respectively associated with a first plurality of category identifiers and the second category path including a second plurality of categories that are respectively associated with a second plurality of category identifiers, wherein the first category structure includes a first hierarchy of categories and the second category structure includes a second alternative hierarchy of categories.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.